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14 Attorneys for Plaintiffs  
15 BAYKEEPER, HUMBOLDT BAYKEEPER, ECOLOGICAL RIGHTS FOUNDATION, and  
COMMUNITIES FOR A BETTER ENVIRONMENT

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 SAN FRANCISCO DIVISION

19 BAYKEEPER, HUMBOLDT BAYKEEPER, ) Case No. C 06-5611 CRB  
20 ECOLOGICAL RIGHTS FOUNDATION, and )  
COMMUNITIES FOR A BETTER )  
ENVIRONMENT, )  
Plaintiffs, )  
v. )  
UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, STEPHEN L. )  
JOHNSON, as Administrator of the United States )  
Environmental Protection Agency, WAYNE )  
NASTRI, as Regional Administrator of the United )  
States Environmental Protection Agency, Region 9, )  
Defendants. )

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1 WHEREAS, by Order dated December 4, 2006, the Court appointed Daniel Bowling as  
2 the Mediator assigned to this case pursuant to the Alternative Dispute Resolution Local Rules  
3 ("ADR L.R.") of this Court;

4 WHEREAS, the Plaintiffs Baykeeper, Humboldt Baykeeper, Ecological Rights  
5 Foundation, and Communities for a Better Environment (collectively, "Plaintiffs") and the  
6 Defendants United States Environmental Protection Agency, Stephen L.  
7 Johnson, as Administrator of the United States Environmental Protection Agency, Wayne Nastri,  
8 as Regional Administrator of the United States Environmental Protection Agency, Region 9  
9 (collectively, "Defendants") have been engaged in mediation discussions supervised by Mr.  
10 Bowling since December 4, 2006;

11 WHEREAS, the Plaintiffs and Defendants (collectively, "the Parties") have exchanged  
12 several confidential draft settlement agreements and related confidential settlement  
13 communications in the course of pursuing this court-ordered mediation;

14 WHEREAS, the Parties met in person on March 22, 2007 for a mediation session  
15 directed by Mr. Bowling and executed a confidentiality agreement on that date;

16 WHEREAS, the Parties have to date preserved the confidentiality of all their mediation  
17 communications and continue to agree that preserving confidentiality of their mediation  
18 communications is important for facilitating the success of those communications;

19 NOW, THEREFORE, the parties have agreed to continue to preserve the confidentiality  
20 of all their mediation communications and request that the Court issue an order as follows:

21 1. Consistent with ADR L.R. 5-12 and 6-11 governing the confidentiality of  
22 mediation sessions, the Parties shall treat as confidential information any documents produced  
23 and anything that happens or is said in connection with the court-directed mediation in this  
24 action. Confidential information shall not be disclosed to anyone not involved  
25 in this litigation except as required by court order, shall not be disclosed to the assigned judge,  
26 and shall not be used by the parties for any purpose, including impeachment, in any pending or  
27 future proceedings unless all parties and the neutral so agree;

2. The parties further agree that any evidence, which is otherwise admissible or subject to discovery or disclosure, shall not become inadmissible or protected from disclosure solely by reason of its introduction or use in this ADR proceeding. Further, disclosure of information which is otherwise privileged shall not alter its privileged character;

3. The parties further agree not to subpoena the neutral or any documents submitted to or prepared by the neutral in connection with or during the mediation or ENE sessions. The neutral shall not voluntarily testify on behalf of a party; and

4. This agreement shall not preclude a report to or an inquiry by the ADR Magistrate Judge pursuant to ADR L.R. 2-4(a) regarding a possible violation of the ADR Local Rules. Nor shall this agreement render inadmissible a written settlement agreement reached as a result of this ADR proceeding in an action to enforce that settlement.

Respectfully submitted,

Dated: March 26, 2007

FOR PLAINTIFFS:

/s/ Christopher Sproul<sup>1</sup>  
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## FOR DEFENDANTS:

KEVIN V. RYAN  
United States Attorney

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment & Natural Resources Division

<sup>1</sup>As the filing attorney, I, Christopher Sproul, attest that Defendants' counsel finds the contents of this filed document acceptable and has given me permission to electronically file this stipulated motion on Defendants' behalf.

/s/ Lily N. Chinn  
LILY N. CHINN  
Trial Attorney  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
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It is so ordered.

DATED: March 27, 2007

